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October 10, 2000

David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505


**In Re:           Petition of The Tennessee Small Local Exchange Company Coalition  
for Temporary Suspension of 47 U.S.C. §251(b) and 251(c) Pursuant  
to 47 U.S.C. §251(f) and 47 U.S.C. §253(b)  
Docket No.   99-00613**

Dear David.

Please accept for filing the original and thirteen copies of the Supplemental  
Testimony of Don J. Wood on behalf of the Southeastern Competitive Carriers Association in  
the above-referenced proceeding.

Sincerely,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:   
Henry Walker

HW/nl  
Attachment  
c: Parties

POSTED  
10-11-00

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE TENNESSEE

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EXECUTIVE SECRETARY

In Re:   Petition of The Tennessee Small   )  
          Local Exchange Company        )  
          Coalition for Temporary        )  
          Suspension of 47 U.S.C.        )  
          §251(b) and 251(c) Pursuant to   )  
          47 U.S.C. §251(f) and 47        )  
          U.S.C. §253(b)                   )

Docket No.   99-00613

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**SUPPLEMENTAL TESTIMONY**

**OF DON J. WOOD ON BEHALF OF**

**THE SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION**

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October 10, 2000

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Don J. Wood. My business address is 4625 Alexander Drive, Suite 125, Alpharetta, Georgia 30022.

Q. ARE YOU THE SAME DON J. WOOD WHO PRESENTED DIRECT TESTIMONY ON BEHALF OF SECCA IN THIS PROCEEDING?

A. Yes. Since that time, however, my address has changed to the one given above.

Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?

A. The purpose of my supplemental testimony is to describe the limited impact of the Eighth Circuit Court's ("Court") July 18, 2000 decision on the issue before the Authority in this proceeding.

Q. IN YOUR DIRECT TESTIMONY, YOU STATED THAT THE ACT SETS FORTH CERTAIN PRO-COMPETITIVE OBJECTIVES. DID THE COURT'S OPINION IMPACT THESE OBJECTIVES OR THE SCOPE OF THEIR APPLICATION?

A. Not at all. The stated purpose of the Act is to "provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." The Act

does not limit this objective to only certain geographic areas or certain services, and nothing in the Court's opinion limits the scope of this stated objective.

In my direct testimony, I also responded to the testimony of LEC coalition witness Mr. Steven E. Watkins. Mr. Watkins devoted a substantial portion of his testimony to arguments regarding the merits of a competitive structure versus a regulated monopoly structure for telecommunications markets. This debate, while interesting, has already been decided by Congress, and the Court's decision does nothing to change this fact.

Q. PURSUANT TO THE ACT, UNDER WHAT CIRCUMSTANCES CAN THE COALITION MEMBERS BE EXEMPTED FROM THESE OBLIGATIONS?

A. Pursuant to §251 (f) (2), a rural LEC may petition a state regulator for "a suspension or modification of the application" of a requirement of subsection (b) or (c). The state regulator may grant such a suspension only "to the extent that, and for such duration as" it determines that such a suspension or modification is necessary to (1) avoid a significant adverse economic impact on users of telecommunications services generally, (2) avoid imposing a requirement that is unduly economically burdensome, or (3) avoid imposing a requirement that is technically infeasible. Any exemption must also be determined to be consistent with the public interest, convenience, and necessity. Until such an exemption is granted, the requirements of §251 (b) apply to all ILECs.

Q. ARE ANY OF THESE REQUIREMENTS OF THE ACT IMPACTED BY THE COURT'S DECISION?

A. No.

Q. DID THE FCC IMPLEMENT RULES IN AN ATTEMPT TO PROVIDE CLARIFICATION OF THE SPECIFIC CIRCUMSTANCES UNDER WHICH AN EXEMPTION CAN BE GRANTED?

A. Yes. Subpart E of the FCC's section 51 rules addressed this issue and provided certain points of clarification regarding the burden of proof and the standard to be applied. First, §51.405 made it clear that a rural telephone company seeking an exemption of either the requirements of §254 (b) or (c) "must prove to the state commission" that such an exemption is necessary. Second, this rule provided clarification of what must be shown in order to demonstrate that a specific provision is "unduly economically burdensome": the rural LEC must show that "the application of the requirements of section 251(b) or 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry".

Q. HAVE THESE FCC RULES BEEN IMPACTED BY THE COURT'S DECISION?

A. Yes, but only to a limited degree. Specifically, the Court changed the burden of proof for petitions made pursuant to section 251 (f) (1), but not for petitions – such as the one in

this proceeding – made pursuant to section 251 (f) (2). As a result, the Coalition members retain the full burden of proof in this proceeding.

The FCC requirement regarding what the Coalition members must prove has also changed slightly (although as I explain below, the Authority may still apply the FCC's standard). The LECs must still prove that the granting of their petition is necessary to (1) avoid a significant adverse economic impact on users of telecommunications services generally, (2) avoid imposing a requirement that is unduly economically burdensome, or (3) avoid imposing a requirement that is technically infeasible.<sup>1</sup> The Court has removed the FCC's mandatory definition of "undue economic burden" as a burden "beyond the economic burden that is typically associated with efficient competitive entry." It is now up to the Authority to determine how "undue economic burden" should be defined in order to implement the objectives of the Act, including the elements of section 251.

Q. DOES THE COURT'S DECISION PROHIBIT THE AUTHORITY FROM DEFINING "UNDUE ECONOMIC HARM" AS THE FCC DEFINED IT?

A. No. The FCC's definition remains a reasonable, but not required, interpretation of "undue economic harm." Whenever competition is introduced into an area previously served by a monopoly provider, it is unreasonable to expect that there will be no impact on the incumbent. Of course, there are two ways that an incumbent can respond. The first

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<sup>1</sup> The Court clarified that each of these criteria must be considered by a state regulator considering such a petition. That portion of the decision has no impact on this proceeding, because Mr. Watkins and I both noted all three criteria

option is to erect barriers wherever possible, and limit the effects of competition to the extent possible. This strategy will likely result in limited losses by the incumbent, and limited benefits for customers. Second, the incumbent can respond affirmatively to competition, comply with the requirements of the Act, and seek to play the largest role possible in the provisioning of telecommunications services – including advanced services – to customers. This strategy, because of the growth in the market, can lead to net gains for the incumbent and provides the greatest benefit to customers.

Whichever path is chosen by the incumbent, it is reasonable for the Authority to consider the impacts beyond those associated with competitive entry when deciding whether that competitive entry is going to be permitted or prevented.

Q. SHOULD THE FACT THAT THE COALITION MEMBERS OPERATE IN RELATIVELY LOW DENSITY AREAS IMPACT THE AUTHORITY'S DECISION TO GRANT THE PETITION?

A. No. As I stated in my direct testimony, the requirements of the Act that apply to the Coalition members each include the opportunity for the LEC to recover the cost of what it is being asked to provide, including those costs that are unique to that LEC because of the nature of the geographic area that it serves. If coalition members are to be exempted from the Act's pro-competitive provisions, it should not be because they currently provide

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in our direct testimony, and there has been no dispute that all three criteria must be applied.

service in a relatively costly area. If the Authority concludes that the cost to a coalition member to provide a UNE pursuant to §251 (c) (3) is more costly because of the characteristics of the geographic area, the proper remedy is to establish a UNE rate that properly reflects those costs. In contrast, it is not the proper remedy to eliminate the possibility of competitive alternatives for end users living in that area by exempting the coalition member from the §251 requirements.

Q. HAVE THE COALITION MEMBERS MADE THE NECESSARY DEMONSTRATION, AS ARTICULATED BY THE COURT IN ITS DECISION, OF UNDUE ECONOMIC HARM?

A. No. As I described in my direct testimony, the Coalition members have not offered such a demonstration, and the decision by the Court does not change their burden to do so. The testimony of Mr. Watkins (including his September 9, 2000 Supplemental Testimony) which describes various potential scenarios is no substitute for such a demonstration. There is nothing in the Court's decision that relieves the Coalition members of this burden.

Q. PLEASE SUMMARIZE YOUR SUPPLEMENTAL TESTIMONY.

A. In order for their petition to be granted, the Coalition members bear the burden of demonstrating to the Authority that an exemption from competitive entry pursuant to the



requirements of section 251 of the Act will be necessary in order to (1) avoid a significant adverse economic impact on users of telecommunications services generally, (2) avoid imposing a requirement that is unduly economically burdensome, or (3) avoid imposing a requirement that is technically infeasible. The decision of the Court does not change this requirement, and the required demonstration has not been made (or even offered) in this proceeding.

Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY?

A. Yes.

# **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served via U.S. First Class Mail or Hand Delivery on the following party of record on this the 10<sup>th</sup> day of October, 2000.

Dale R. Grimes, Esq.  
Bass, Berry & Sims  
2700 First American Center  
Nashville, TN 37238-2700



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